

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2304249
Decision Date:	7/11/2023	Hearing Date:	06/30/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:
Pro se via telephone

Appearance for Respondent:
Miatta Edi-Osagie, Administrator
Lisa James, Acting Director of Nursing
Karen Darby, Assistant Director of Nursing
Lynn Wilson, Social Worker
Via telephone



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge
Decision Date:	7/11/2023	Hearing Date:	06/30/2023
Respondent's Rep.:	Miatta Edi-Osagie <i>et al</i>	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Tewksbury MassHealth Enrollment Center		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated May 23, 2023, the respondent notified the appellant that it was seeking to discharge him from their nursing facility by June 23, 2023 because it had determined that the appellant's "...health has improved sufficiently so that he no longer needs the services provided by the facility..."; and he had "...failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare of [sic] Medicaid) a stay at the facility..." (See 130 CMR 610.028 - 610.030 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner, also on May 23, 2023. (See 130 CMR 610.015(B) and Ex. 1). A nursing facility-initiated transfer or discharge is valid grounds for appeal. (See 130 CMR 610.032(C)).

Action Taken by Respondent

The respondent notified the appellant of its intent to discharge him from its facility by June 23, 2023, because it determined the appellant's health had improved sufficiently so that he no longer needed services the nursing facility provided and because he had failed to pay for his stay at the facility after reasonable and appropriate notice.

Issues

The appeal issues are whether the respondent was correct, pursuant to 130 CMR 610.028, in determining that the appellant should be discharged from the nursing facility and whether the nursing facility followed the correct procedures to allow them to discharge the appellant from the nursing facility.

Summary of Evidence

The nursing facility social worker stated that the facility issued the notice on May 23, 2023, based on the appellant's improved health and his failure to pay his patient paid amount (PPA). (Ex. 1, p. 2; Ex. 4, p. 2). The notice states that it was hand also delivered to the appellant on May 23, 2023. (Ex. 1, p. 2). The notice further states the following:

- The respondent sought to discharge the appellant to an unspecified sober home in a specified area in Massachusetts on June 23, 2023.¹ (Ex. 1 ,p. 2; Ex. 4, p. 2).
- The name of a person at the nursing facility responsible for supervising the appellant's discharge with that individual's telephone number. (Ex. 1, p. 3; Ex .4, p. 3).
- The contact information for the local long term care ombudsman program, the Disability Law Center, the Center for Public Representation (for mentally ill individuals); and the local legal service office. (Ex. 1, p. 5; Ex. 4, p. 5).
- Instructions on how to request a fair hearing with contact information for the Board of Hearings, and the effect that requesting a hearing would have on the appellant's discharge. (Ex. 1, pp. 3, 6-7; Ex. 4, pp. 3, 6-7).

The social worker stated that the appellant was admitted to the facility on [REDACTED] 2021, and has not paid his PPA since that date. (Ex. 4, p. 8). He has a substantial bill which totaled \$15,562.80 as of the time the facility issued the notice. (Ex. 1, p. 6; Ex. 4, p. 7). The appellant has also not paid in June 2023.

The Acting Director of Nursing (the Director of Nursing) stated that though she had only been working at the facility for two weeks, she was able say that the appellant walks to the store on a daily basis. The appellant is independent with all aspects of his self-care. The appellant is choosing to reside at the facility without paying a PPA but signs out whenever he wishes. He walks about ½ a mile to go to the store. The facility is not providing the appellant with any services other than providing his medications. The appellant was admitted to the facility from a hospital after an

¹ The facility did name a specific town in Massachusetts, which is being omitted here for reasons of confidentiality.

amputation of the appellant's right leg below the knee, The Director of Nursing stated that the appellant has made significant improvement since that time. He now switches between using a prosthetic and using a wheelchair. The social worker noted that the appellant left the facility and returned intoxicated.

The administrator stated that the appellant had been at the facility for over a year and was followed by the facility's internal medicine department. In response to a question, the administrator stated that the appellant did not seem to have a physician in the community. The social worker stated that if the appellant were to be discharged, the facility would assist him in finding a primary care physician in the community prior to discharge.

The hearing officer then asked what preparations the nursing facility had given the appellant in order to prepare for his discharge. The Director of Nursing stated that the appellant requested a referral to sober programs in the area specified in the notice. The Director of Nursing stated that the facility has attempted to contact these programs and so far, they have declined to admit the appellant. The appellant has told the facility that it would be okay for them to discharge him to a medical based shelter and named two in particular with which the facility had good relations. The Director of Nursing stated that the appellant would benefit from being in the community and that the facility had done all they could for the appellant.

The appellant stated that he did make an attempt to pay his PPA in January 2023. The appellant was told at that time that he had to pay off the entirety of his back payment. They would not accept his monthly payment and did not offer him a repayment plan. The appellant stated that he lost his lower leg in a fire. He had been treated at Massachusetts General Hospital and was discharged to the facility. The appellant stated that he requested to see doctors in the community, but the facility did not assist him in this. The appellant felt he had not been well treated at the facility. For instance, the staples in his left did not come out until [REDACTED] 2022, which was about 14 months after he lost his leg. The appellant stated that even before losing his right leg, he had been scheduled to have surgery on his left knee, which has not been rescheduled. The appellant stated that his left knee gives out. The appellant also disputed that he walks long distances. The most he is able to walk is about one block, which was nowhere near the ½ mile the facility representative said he walked. The appellant stated that the facility has bare discussed his options upon discharge. The appellant stated that he briefly spoke with them about discharge to the sober houses but that had not been followed up.

The Director of Nursing disputed the appellant's characterization of the efforts to assist him with his discharge. She stated that they had attempted to meet with the appellant on several occasions.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant was admitted to the facility from a hospital on [REDACTED] 2021. (Ex. 4, p. 8).

2. The appellant was admitted to the facility as a result of an amputation of his right leg below the knee. (Testimony of the Director of Nursing; Testimony of the appellant).
3. The facility hand delivered a discharge notice to the appellant on May 23, 2023. (Ex. 1, p. 2; Ex. 4, p. 2).
4. The notice stated that the facility sought to discharge the appellant to a non-specified sober home in a specified town in Massachusetts on June 23, 2023. (Ex. 1, p. 2; Ex. 4, p. 2).
5. The reasons given for the discharge were that the appellant's health had improved sufficiently so that he no longer needed the services provided by the facility and he had failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. (Ex. 1, p. 2; Ex. 4, p. 2).
6. The discharge notice further contained the following information:
 - The name of a person at the nursing facility responsible for supervising the appellant's discharge with that individual's telephone number. (Ex. 1, p. 3; Ex. 4, p. 3).
 - The contact information for the local long term care ombudsman program, the Disability Law Center, the Center for Public Representation (for mentally ill individuals); and the local legal service office. (Ex. 1, p. 5; Ex. 4, p. 5).
 - Instructions on how to request a fair hearing with contact information for the Board of Hearings, and the effect that requesting a hearing would have on the appellant's discharge. (Ex. 1, pp. 3, 6-7; Ex. 4, pp. 3, 6-7).
7. The appellant submitted an appeal to the Board of Hearings, also on May 23, 2023. (Ex. 1, p. 6; Ex. 4, p. 6).
8. As of the date of the appeal, the appellant owed the facility \$15,562.80. (Ex. 1, p. 7; Ex. 4, p. 7).

Analysis and Conclusions of Law

The regulations concerning nursing home discharges are located at 130 CMR 610.028, 610.029 and 610.030. According to 130 CMR 610.028(A), a Nursing Facility resident may be transferred or discharged only when:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the Nursing Facility;
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided**

by the Nursing Facility;

- (3) the safety of individuals in the Nursing Facility is endangered;
- (4) the health of individuals in the Nursing Facility would otherwise be endangered;
- (5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay at the nursing facility; or**
- (6) the Nursing Facility ceases to operate. (Emphases added).

When the facility discharges a resident under any of the circumstance specified in (1)-(5), above, the resident's clinical record must be documented. (130 CMR 610.028(B)). The documentation must be made by "the resident's physician when a...discharge is necessary under 130 CMR 610.028(A)(1) or (2)". (130 CMR 610.028(B)(1)).

Prior to discharge or transfer, the Nursing Facility must hand deliver to the resident and mail to a designated family member or legal representative a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (1) the action to be taken by the Nursing Facility;
- (2) the specific reason or reasons for the discharge or transfer;
- (3) the effective date of the discharge or transfer;
- (4) the location to which the resident is to be discharged or transferred;**
- (5) a statement informing the resident of his or her right to request a hearing before the Nursing Facility agency including:
 - (a) the address to send a request for a hearing;
 - (b) the time frame for requesting a hearing as provided for under 130 CMR 610.029; and
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for Nursing Facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6041 et seq.);
- (8) for Nursing Facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. § 10801 et seq.);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal services office; and

(10) the name of a person at the Nursing Facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal. (Emphasis added). (130 CMR 610.028(C)).

Additionally, the notice must be made by the facility at least 30 days before the date the resident is to be discharged or transferred, except when the circumstances for an emergency discharge or emergency transfer are met. (130 CMR 610.029).

Further, Mass. Gen. Laws ch. 111, §70E provides that “[a] resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a Nursing Facility licensed under section 71 of this chapter, **unless a referee determines that the Nursing Facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place.**” (Emphasis added). Finally, federal regulations require that a Nursing Facility provide sufficient preparation for a safe and orderly discharge. (See 42 CFR 483.12(a)(7)).

A preponderance of the evidence shows that the nursing facility should not discharge the appellant based on the notice under appeal. The facility asserted that the appellant’s condition has improved. They submitted hundreds of pages of documentation but did not identify the documentation by the appellant’s physician supporting the decision to discharge. The facility did not sufficiently document that it had provided preparation and orientation to the appellant to ensure his safe and orderly transfer or discharge to another safe and appropriate place. Indicative of this is the fact that the facility has failed to identify an actual location to which the appellant was to be discharged.

For the above stated reasons, the appeal is APPROVED.

Order for Respondent

Rescind the May 23, 2023 notice. Do not discharge the appellant under this notice.

Implementation of this Decision

If the Nursing Facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

CC:

[REDACTED]